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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,042	02/05/2002	Cory O. Nykoluk	26/1145US(2)	4190
38790	7590	03/28/2006	EXAMINER	
DEAN D. SMALL C/O ARMSTRONG TEASDALE LLP ONE METROPOLITAN SQUARE, SUITE 2600 ST. LOUIS, MO 63102-2740			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,042

Applicant(s)

NYKOLUK ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 47-87 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 47-87 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the two curved arms spaced apart in claim 51, the rigid bottom along with the wheel wells, the handle mounted to the distal end along an axis extending generally perpendicular to the center while being configured to pivot about the center axis with a locking mechanism must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 51, 60, 61, 65, 73, and 74-85 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original disclosure does not teach the two curved arms spaced apart from one another (cl. 51, 77, 65), and the rigid base with wheel wells (cl. 60, 73), the handle mounted to the distal end along an axis extending generally perpendicular to the center while being configured to pivot about the center axis with a locking mechanism (cl. 61), the at least one curved arm (cl. 74) with the two locked positions. This is a new matter rejection.

3. Claims 47-60, 80 and 86 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 47, "an having a proximal end" is confusing.

In claim 47, "configured to pivot about the center axis at the distal end of the arm while being otherwise restrained from movement relative to the distal end" is confusing. It is unclear how the handle can pivot about the center axis while being restrained from movement.

In claim 51, "the at least one arm" has no antecedent basis.

Regarding claim 80, it is unclear what comprises the planar member in claim 80. Portion 262 is not a planar member.

4. Claims 47, 52-54, 56, 61, 66, 67, 69, 73, 86, and 87 are rejected under 35 U.S.C. 102(e) as being anticipated by Bellini (PC EP0100582/2003013079). Bellini teaches a towing member having non-extendable portion 16 (pg. 2, pg. 21, ln. 4), an arm having a proximal end, a distal end movable between extended and retracted positions, a towing handle 20 pivotally connected to the distal end of the arm via portion 19 configured to pivot about the center axis at the distal

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end of the arm a locking mechanism located proximate the handle and the distal end of the arm the locking mechanism being selectively moveable between a locked position (shown in Fig. 4) and an unlocked position, wherein the locking mechanism prevents pivoting of the towing handle about the center axis in the lock position and permits pivoting of the towing handle about the center axis when in the unlocked position.

Regarding claim 53, note the backpack (pg. 1, para 2)

Regarding claim 54, the release mechanism comprising the pulling of the handle to unlock the lock tabs as claimed.

Regarding claim 56, the handle in Bellini has a tubular cross section as claimed.

5. Claims 49-51, and 63-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellini in view of Miyoshi (5908093), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Miyoshi in view of Bellini. It would have been obvious to one of ordinary skill in the art to provide curved portions in Bellini as taught by Miyoshi to tow the luggage easily.

In the alternative, it would have been obvious to one of ordinary skill in the art to provide the handle of Bellini in Miyoshi to enable one to handle the luggage easily.

6. Claims 48-50, and 62-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellini in view of Mao (6279706), It would have been obvious to one of ordinary skill in the art to provide curved portions in Bellini as taught by Mao to tow the luggage easily and/or to conform with the back of the user.

7. Claims 60 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellini in view of either Tsai (5524920) or Hung-Hsin (5374073). It would have been obvious to one of

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ordinary skill in the art to provide a rigid back with wheel wells as taught by either Tsai (portion 1), or Hung-Hsin (portion 31) to provide a desired base for the luggage.

8. Claims 47, 52, 54-57, 59, 61, 66-72, 86, and 87 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu (6530459) or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Miyoshi (5908093). Lu '459 teaches a towing member having non extendable portion (inherently couple to portion 11), an arm having a proximal end, a distal end movable between extended and retracted positions, a towing handle 20 pivotally connected to the distal end of the arm via portion 19 configured to pivot about the center axis at the distal end of the arm a locking mechanism located proximate the handle and the distal end of the arm the locking mechanism being selectively moveable between a locked position (shown in Fig. 4) and an unlocked position, wherein the locking mechanism prevents pivoting of the towing handle about the center axis in the lock position and permits pivoting of the towing handle about the center axis when in the unlocked position.

Regarding claim 58, note the protrusions forming the channels 713.

Regarding claim 59, note the cylindrical shape of the arm. The cylindrical shape is uniformly curved along the length.

Regarding claims 57, 70, the lateral portion 322 and the stem 324 forms the T-shaped handle as claimed.

9. Claims 47, 49-52, 54-57, 59, 61, 66-72, 86, and 87 are under 35 U.S.C. 103(a) as being unpatentable over Lu '459 in view of Miyoshi (5908093), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Miyoshi in view of Lu. To the degree it is argued that Lu fails to teach a non extendable portion, It would have been obvious to one of ordinary skill in the

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art to provide an extendable portion as taught by Miyoshi (Fig. 5, portion 55A) to provide a connection to the luggage.

Regarding claim 49, It would have been obvious to one of ordinary skill in the art to provide curved arm portions to enable one to tow the luggage easily.

In the alternative, it would have been obvious to one of ordinary skill in the art to provide the handle of Lu'459 in Miyoshi to enable one to handle the luggage easily.

10. Claims 48-51, 62-65, 72, and 74-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Lu '459 rejections, as set forth in paragraphs 9 and 10 in view of Mao (6279706). Lu'459 meets all claimed limitations except for the curved portions of the arms. It would have been obvious to one of ordinary skill in the art to provide curved portions of the arms in Lu as taught by Mao to tow the luggage easily.

Regarding claim 80, portion 50 is the planar shape as claimed.

11. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lu'459 as set forth in paragraphs 9 and 10 in view of Scicluna (5984154). It would have been obvious to one of ordinary skill in the art to provide strap forming a backpack in Lu as taught by Scicluna to provide an alternative means for carrying the luggage.

12. Claims 60 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of either Tsai (5524920) or Hung-Hsin (5374073). It would have been obvious to one of ordinary skill in the art to provide a rigid back with wheel wells as taught by either Tsai (portion 1), or Hung-Hsin (portion 31) to provide a desired base for the luggage.

13. Claims 47-59, 61-72, and 74-87 are rejected under 35 U.S.C. 102(e) as being anticipated by Lu (6508344). Lu '344 teaches a towing member having non extendable portion (inherently

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couple to portions 11), an arm having a proximal end, a distal end movable between extended and retracted positions, a towing handle 20 pivotally connected to the distal end of the arm via portion configured to pivot about the center axis at the distal end of the arm a locking mechanism located proximate the handle and the distal end of the arm the locking mechanism being selectively moveable between a locked position and an unlocked position, wherein the locking mechanism prevents pivoting of the towing handle about the center axis in the lock position and permits pivoting of the towing handle about the center axis when in the unlocked position.

Regarding claim 48, portions 11 are curved outward conforming to the curved back wall of the backpack.

Regarding claim 68, at least a portion of button 37 faces upward as claimed.

14. Claims 47-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Mao. To the degree it is argued that Lu does not teach a non-extendable portion, it would have been obvious to one of ordinary skill in the art to provide a non-extendable portion 31 to provide a connection to the luggage.

To the degree it is argued that portions 11 are not curved portions, it would have been obvious to one of ordinary skill in the art to provide the curved arm portions as taught by Mao to enable one to tow luggage easily and/or to conform to the back of the user.

Regarding claims 60 and 73, it would have been obvious to one of ordinary skill in the art to provide the rigid base having a bottom portion to provide a structure for the backpack.

15. Claims 47, 52-57, 59-61, 63-64, and 66-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Chen (6591951). Chen teaches a non-extendable portion, a towing handle and a locking mechanism as claimed.

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16. Claims 47-50, 52-64, 66-76, and 78-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Mao. To the degree it is argued that Lu does not teach a non-extendable portion, it would have been obvious to one of ordinary skill in the art to provide a non-extendable portion 31 to provide a connection to the luggage.

Regarding claim 48, it would have been obvious to one of ordinary skill in the art to provide the curved arm portions as taught by Mao to enable one to tow luggage easily and/or to conform to the back of the user.

Regarding claims 60 and 73, it would have been obvious to one of ordinary skill in the art to provide the rigid base having a bottom portion to provide a structure for the backpack.

17. Claims 47, 52, 54, 56, 57, 59, 61, 66, 67, 69, 70, and 72 are rejected under 35 U.S.C. 102(e) as being anticipated by Kim (6182983). Kim teaches a baggage having a towing handle having a non-extendable portion 512, an arm 520, a pivot mechanism 540 connecting the towing handle to the distal end of the arm. It is noted that the arm 520 is retractable with respect to the non-extendable portion, i.e., pivotally retractable via the locking portion 513.

18. Applicant's arguments along with the declaration filed on 07/15/2005 have been considered, but the declaration does not place the case in condition for allowance. It is noted that the figures shown in the declaration fails to show the locking structure as claimed. Furthermore, it is noted that none of the exhibit would disclose a similar device shown in Lu '459. The exhibit shows a T-shaped handle structure while the handle in Lu '459 disclose a different type of handle structure.

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With respect to the Lu '344, none of the exhibit shows the claimed locking feature. In the very least, the exhibit shows a handle structure 8-11, but without a locking structure as claimed.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
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